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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,012

06/27/2006

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EXAMINER

MAEWALL, SNIGDHA

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

03/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/551,012	Applicant(s) PICKLES, MATTHEW JONATHAN	
	Examiner Snigdha Maewall	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/25/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Summary

1. Receipt of IDS filed on 11/25/05 is acknowledged.

Claims 1-7 are pending in this application and claims 1-7 will be prosecuted on the merits.

Claim Objections

Claims 1 and 4-6 have grammatical errors. Claim 1 recites the limitation "as abrasive". Examiner suggests replacing the phrase with "an abrasive". Claims 4-6 recite the limitation "of from" or "at from". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 provides for the use of lanthanide metal oxide but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it

merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 7 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McArdle et al. (USP 6,620,214) in view of Gunnar et al. (GB 2001849 A).

McArdle et al. discloses a method for producing ceramic aggregate particles for use in various industries such as orthopedic and dental industries (see column 1, lines, 29-30). The ceramic aggregate particles can be used in dental compositions (see column 3, lines 20-25). Silica abrasive is disclosed in column 5, lines 63-65 and ceria abrasive particulates are disclosed in column 9, lines 5-10. Various ceramic powders such as titanium oxide, iron sulfides etc. are disclosed in column 7, lines 35-40).The

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particle size of the solid particulates is disclosed to be in the range of about 0.5 to about 1500 micrometers (see column 7, lines 50-55). Useful fillers such as calcium carbonates which affect the property of porosity level, hardness etc. are disclosed in column 8, lines 5-10). The ceramic abrasive also comprises lanthanum oxide (see column 9, lines 24-26). Although the percentage of the claimed amounts of various components is not same as disclosed in the prior art, manipulation of such parameter would have been within the purview of a skilled artisan based on the desired composition.

The reference does not specifically teaches oral composition , however the reference teaches applicability of the claimed abrasives in dental compositions. With regard to oral composition comprising lanthanide oxides, Gunnar et al. teaches teeth cleaning compositions comprising yttrium, scandium and lanthanum and lanthanides (see abstract). Gunnar teaches that lanthanides and their salts can be used as antiplaque agents. The reference teaches that the cations of use are those derived from lanthanum and lanthanides and a preferred cation is lanthanum cation (see page 1, lines 45-50).

It would have been obvious to one of ordinary skilled in the art at the time the invention was made to formulate an oral composition based on the teachings of McArdle et al. and Gunner et al. because McArdle et al. teaches that the abrasives such as silica, calcium carbonate and lanthanum oxide and cerium oxide can be used in dental composition and Gunnar teaches that lanthanides and their salts can be used as antiplaque agents. Since antiplaque agents are known in the dental industry as abrasives, one skilled in the art would have expected the lanthanide salts to possess

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abrasive characteristics. A skilled artisan would thus have been motivated to prepare an oral composition comprising abrasive silica, calcium carbonate, lanthanum oxide and cerium oxide with a reasonable expectation of success.

6. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over (USP 6,258,342 ('342)) in view of Gunnar et al. (GB 2001849 A) and McArdle et al. (USP 6,620,214).

The teachings of McArdle et al. (USP 6,620,214) and Gunnar et al. have been discussed above.

'342 teaches process for making toothpaste using agglomerated dispersible polymers (title). The dentifrice comprises abrasives such as silica, calcium carbonate (see column 4, lines 30-53).

The reference lacks lanthanum oxide and cerium oxide as abrasives, however, in view of Gunnar et al. as discussed above, describing lanthanides and their salts as antiplaque agents in the reference, it would have been obvious to the one of ordinary skilled in the art to incorporate lanthanide salts and further motivated by the teachings of McArdle et al. which teaches that lanthanum oxides or cerium oxides can be used in dental formulations, it would have been obvious to the one of ordinary skilled in the art to incorporate lanthanide oxides in the composition forwarded by '342 with a reasonable expectation of success. A skilled artisan would thus have been motivated to prepare an oral composition comprising abrasive silica, calcium carbonate, lanthanum oxide and cerium oxide with a reasonable expectation of success.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gollamudi S Kishore, Ph.D/

Primary Examiner, Art Unit 1612

/Snigdha Maewall/
Examiner, Art Unit 1612